

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

**In Re: Pamela A. Burford,
Debtor.**

**Case No. 3:09-BK-34274-KRH
Chapter 13**

**Pamela A. Burford,
Carl Bates, Chapter 13 Trustee,
Plaintiffs.**

v.

APN: 3:09-AP-03170-KRH

**Wachovia/Wells Fargo, Assignee to Aegis Funding Corporation,
Stacy S. Temple,
Charles Burford,
Defendants.**

AMENDED Complaint to Avoid Lien Pursuant to 11 U.S.C. §§ 522 and 544

COMES NOW the Plaintiff, by counsel, and for her amended complaint respectfully represent as follows:

1. This is an action brought by the Plaintiff pursuant to 11 U.S.C. §§ 522 and 544 and F.R.Bankr.P. 3012 to determine the value of the interest of the Defendants in the residential real estate of the debtor and determine the amount of the allowed secured claim of the Defendant.

JURISDICTION, VENUE AND CORE PROCEEDING

2. The Plaintiff alleges that this is a core proceeding pursuant to 28 U.S.C. § 157.
3. The Plaintiff further alleges that this Court has both personal and subject matter jurisdiction to hear this case pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157.

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4. The Plaintiff further alleges that venue is properly laid in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c) and 1409.

PARTIES

5. Plaintiff Pamela A. Burford (the "Plaintiff") is a Debtor-in-Bankruptcy pursuant to 11 U.S.C. §101(13).
6. Plaintiff Carl Bates is the Chapter 13 Trustee assigned to the underlying bankruptcy and represents the interests of the bankruptcy estate.
7. Upon information and belief, defendant Wachovia/Wells Fargo is the alleged assignee of a note and deed of trust held by Aegis Funding Corporation.
8. Upon information and belief, defendant Wachovia/Wells Fargo may be served through its counsel, Jeffrey L. Marks of Kaufman & Canoles, P.C., 2101 Parks Avenue, Suite 700, Virginia Beach, VA 23451.
9. Upon information and belief, defendant Stacy S. Temple is the named trustee under the Deed of Trust.
10. Upon information and belief, defendant Stacy S. Temple is a Virginia resident who may be served at 291 Independence Boulevard, #219, Virginia Beach, VA 23462.
11. Defendant Charles Burford is the named borrower on the Deed of Trust at issue in this case.
12. Upon information and belief, defendant Charles Burford may be served at 5201 S. Jessup Road, Chesterfield, VA 23832.

FACTS

13. The Plaintiff commenced this case by filing, on July 6, 2009, a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division. The petition for relief was assigned case number 3:09-BK-34274-KRH.
14. The deadline for filing a claim expired on November 18, 2009. The deadline to object to the dischargeability of certain debts expired on October 19, 2009.
15. The Plaintiff and Charles Burford own real estate situated in Chesterfield County, Virginia known as 5201 S. Jessup Road by way of Deed recorded in the Circuit Court of Chesterfield County, Virginia in Book 6796 at Page 0058. The legal description of that property is as follows:

ALL that certain lot, piece or parcel of land, with all improvements thereon and appurtenances thereto belonging, lying and being in the County of Chesterfield, Virginia, and shown and designated as Lot 31, Block C, Section 3, on Subdivision Plat of Fairpines, recorded in the clerk's Office, circuit Court, Chesterfield County, Virginia, in Plat Book 46, page 8, to which plat reference is hereby made for a more particular description of the property.

BEING the same real estate conveyed to Anthony E. Perry by deed from Charles R. Rose, III and Kimberly T. Rose, husband and wife, dated July 12, 2001, recorded July 26, 2001, in the Clerk's Office, Circuit Court, Chesterfield County, Virginia, in Deed Book 4168, Page 990,

16. Aegis Funding Corporation, not a party to this Amended Complaint, is the original holder of a promissory note secured by a Deed of Trust executed by Charles Burford and recorded in the Circuit Court of Chesterfield County, Virginia in Book 6796 at Page 62.
17. Aegis Funding Corporation, located at 3250 Briarpark, Suite 400, Houston, TX 77042, filed for bankruptcy protection under Chapter 11 on August 13, 2007 in the United States Bankruptcy Court for the District of Delaware, Case No. 07-11122.

18. Upon information and belief, defendant Wachovia/Wells Fargo is the current holder of, and/or assignee for Aegis Funding Corporation.
19. The Deed of Trust does not display an endorsement by either Pamela Burford or James Burford.
20. The Deed of Trust displays an endorsement by "Charles Burford" described as "the Borrower" on the above referenced Aegis Funding Corporation Deed of Trust.
21. On the date "the Borrower" endorsed the Deed of Trust as "Charles Burford", Charles Burford was not an owner of the realty located at 5201 S. Jessup Road, Chesterfield, VA 23832.
22. The Plaintiff is not indebted to Defendants. Because neither the Plaintiff nor her co-owner endorsed the Deed of Trust, the Defendants do not have a lien against any property of the estate. Therefore, neither defendant is a creditor pursuant to 11 U.S.C. 101(10)(A).
23. Neither Defendant has filed a Proof of Claim. Because the time to file has expired, the Defendants have no allowable claim on the bankruptcy estate.
24. The above-referenced property became an asset of the bankruptcy estate as of the date of the filing of the petition for relief. Therefore, whatever interest the Defendants may claim or asset against that property cannot now be perfected.
25. In addition to the Plaintiff's interests in the property, pursuant to 11 U.S.C. § 544, the trustee obtained the rights and powers of a bona fide purchaser of the real estate as of the time of the commencement of the Chapter 13 case. Those rights are superior to any right Defendants may claim.

WHEREFORE, the Plaintiff, Pamela A. Burford respectfully requests of the Court as follows:

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- A. That this Court determine that the Defendants have no secured interest for the on the residential real estate of the Pamela Burford and James Burford;
- B. That this Court determine that the Deed of Trust recorded at Book 6796 Page 62, which was originated by Aegis Funding Corporation and allegedly assigned to Wachovia/Wells Fargo, be declared and be found to be an invalid Deed of Trust on the realty located at 5201 S. Jessup Road, Chesterfield, VA 23832 pursuant to 11 U.S.C. §§ 522 and 544.
- C. That this Court order the Defendants to take all necessary steps to cancel the Deed of Trust currently recorded in the Circuit Court of Chesterfield County, Virginia in Book 6796 at Page 62 and deliver the same to the attorney for the Plaintiff within 20 days from the date of the entry of the said order at no charge or fee for the aforesaid cancellation and delivery;
- D. That the attorney for the Plaintiffs be awarded reasonable legal fees; and
- E. That the Plaintiff has such other and further relief as to the Court may seem just and proper.

Respectfully Submitted,

PAMELA A. BURFORD

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